

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of:

Applications of Charter Communications, Inc.,	)	MB Docket No. 15-149
Time Warner Cable Inc., and Advanced/Newhouse	)	
Partnership for Consent to Transfer Control of	)	
Licenses and Authorizations	)	

**COMMENTS OF**  
AMERICAN COMMUNITY TELEVISION AND SOUTHEAST ASSOCIATION OF  
TELECOMMUNICATIONS OFFICERS ADVISORS

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*PRESIDENT*

October 13, 2015

## **Summary**

American Community Television (“ACT) and Southeast Association of Telecommunications Officers and Advisors (“SEATOA”) respectively submits these comments as ACT and SEATOA (“ACT Commenters”).

### **I. INTRODUCTION**

ACT is a nonprofit 501(c)(4) corporation that has been organized to educate and advocate on behalf of Public, Educational and Government (PEG) access television. SEATOA is a non-profit corporation composed of individuals and organizations serving citizens through city and county government and regional authorities in the states of Florida, Georgia, North Carolina, South Carolina, and Tennessee in the development, regulation, and administration of voice, video, data communications, broadband and PEG operations and information systems services.

### **II. CHARTER COMMUNICATIONS, INC. AS A NEGLIGENT AND HOSTILE COMMUNITY PARTNER**

The announcement that Charter Communications, Inc. (Charter) seeks to acquire Time Warner Cable, Inc. and Advanced/Newhouse has sent a ripple of worry and concern throughout the PEG access television community and municipalities across this country. Charter has proven to be both negligent and hostile to PEG access television and the communities in which it provides cable services.

It is our intention through this filing to provide concrete examples of Charter's lack of public interest and outright hostility in various communities, especially smaller communities that do not have the resources to legally challenge Charter, even when Charter is in breach of legally binding franchise agreements. And it is our intention to ask for stringent conditions to correct Charter's behavior toward PEG and local communities, in order to protect the same from Charter's negligent and hostile behavior.

### **III. COMMUNITY IMPACT OF PEG**

PEG access television has existed since the mid-1960's and was codified in federal law in the 1984 Cable Act. PEG access television serves a variety of purposes, providing transparency of local government, educational programming, religious programming, community organization programming and as a free-speech forum for organizations and individuals in local communities. Additionally, PEG access television provides state and federal government entities tens of millions of dollars in free air time each year. This form of localism is critically important to local communities as part of the compensations for cable operators to use the public rights-of-way.

### **IV. PEG SETBACKS**

PEG access has been and is currently challenged by the cable industry and is particularly challenged by the proposed transactions between Charter Communications, Inc. and Time Warner Cable Inc, and Advanced/Newhouse.

PEG access television has suffered setbacks in the last few years to include, but not limited to:

- 1) Loss of funding due to statewide franchising laws;
- 2) Slamming of PEG channels to an extreme upper digital tier (900's) by Charter Communications, Inc.
- 3) Arbitrary practice of charging the municipality, nonprofit entity managing PEG, or educational institution for the transmission of the channel by the cable operator by Charter Communications, Inc. A practice not seen elsewhere in the cable industry ;
- 4) The requirement to enter into a Memorandum of Understanding in states with statewide franchising even when there is no such provision in state law;
- 5) PEG access closures in various states with statewide franchising due to loss of funding or the operator walking away from the management of the channel;
- 6) the lack of program guide descriptions and a Video On Demand (VOD) platform or DVR functionality.

ACT Commenters recognize that the proposed transactions will likely mean greater negative PEG practices by current Charter communities and those negative practices will likely become more widely spread in those States that become new Charter communities.

**V. EXAMPLES OF CHARTER'S HOSTILE TREATMENT OF PEG ACCESS TELEVISION AND COMMUNITIES.**

PEG access television has suffered severe setbacks in the last ten years, due to statewide/state issued franchising, consolidation and growth of cable operators and monumental struggles over funding. ACT Commenters submit that this trend will only increase if the proposed acquisitions of Time Warner and Advanced/Newhouse, are approved without significant conditions necessary to protect PEG. The intent of Congress in the Cable Act of 1984 was that PEG should be provided as a free speech forum for use by individuals and organizations and as a vehicle for government transparency. The historical narrative of the Cable Communications Policy Act<sup>1</sup> states:

*Public access channels are often the video equivalent of the speaker's soap box or the electronic parallel to the printed leaflet. They provide groups and individuals who generally have not had access to the electronic media with the opportunity to become sources of information in the electronic marketplace of ideas. PEG channels also contribute to an informed citizenry by bringing local schools into the home, and by showing the public local government at work.*

However, while Congress was quite clear that PEG channels should be made available to local communities through municipal agreements (franchises) with cable operators and that they should be adequately funded to meet the needs of the community, cable operators have used extreme political and legal pressure to diminish or eliminate these channels, sometimes deliberately flouting the provisions of federal and/or state law.

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<sup>1</sup> P.L 98-549 (page 30)

Examples of this can be seen in Charter's behavior toward municipalities and PEG access in Missouri, Wisconsin, Montana and Massachusetts.

Not long after the statewide franchising law went into effect in Missouri in 2007, Charter slammed PEG channels to "digital Siberia" by moving them to the mid to upper 900's, requiring Basic cable subscribers to rent additional equipment to access them.<sup>2</sup> While this ignited the ire of the St. Louis City Council, Charter refused to move the channels back to their original designation.<sup>3</sup> Charter openly claimed it needed the bandwidth to satisfy digital requirements while simultaneously moving the Hallmark Channel into the space previously occupied by the Higher Education Channel (HEC TV) and a home shopping channel into space previously occupied by CSPAN2; which was on the Basic tier of service next to the PEG channels.

Charter charges local communities to transmit the PEG channels. In Long Beach, California, subscribers cannot receive the Los Angeles County channel because Charter requires the City of Long Beach to pay for the transmission of the County channel. Charging for the transmission of the channels seems to be applied only in those situations where the statewide franchising law is either silent or vague on the issue, basically these companies do this wherever they believe they can get away with it.

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<sup>2</sup> See City Council Meetings Get Pushed Off Many Screens . St. Louis Post Dispatch. February 21, 2010. [http://www.stltoday.com/news/local/metro/city-council-meetings-get-pushed-off-many-screens/article\\_7944de68-5acd-5f2f-aca7-cf65d658efec.html](http://www.stltoday.com/news/local/metro/city-council-meetings-get-pushed-off-many-screens/article_7944de68-5acd-5f2f-aca7-cf65d658efec.html)

<sup>3</sup> See St. Louis Aldermen Fired Up at Charter; want Cable co. to Move Public Channels Back. St. Louis Post Dispatch. July 1, 2010. [http://www.stltoday.com/news/local/govt-and-politics/st-louis-aldermen-fired-up-at-charter-want-cable-co/article\\_a215677e-853d-11df-96e2-00127992bc8b.html](http://www.stltoday.com/news/local/govt-and-politics/st-louis-aldermen-fired-up-at-charter-want-cable-co/article_a215677e-853d-11df-96e2-00127992bc8b.html)

ACT Commenters maintain that holding communities hostage to exorbitant fees to transmit the channels (sometimes as much as \$4,000 per month) is contrary to the spirit, if not the letter, of state and federal law. If state or federal law requires channels to be provided and Charter refuses to do so unless the local communities pay an arbitrary fee for transmission of the channels, then the cable operators are not adhering to state or federal law.

Additionally, ACT has been contacted regarding a situation in a community in Missouri which ACT maintains is contrary to that state's franchising law. The local government desires to regain its Public Access channel which was closed down due to lack of funding for the nonprofit that was managing it. Missouri law lays out the provision that for a community to acquire a channel it must notify the operator that it intends to substantially program that channel. This notification must be done 120 days in advance of the receipt of the channel. Charter responded to the local government that it must enter into a Memorandum of Understanding (MOU). This MOU would set conditions by Charter on the local government for the use of that channel in what would amount to a pseudo franchise agreement. There is no such provision in Missouri statewide franchising law that would require a local government to enter into a MOU, the only provision for obtaining a channel is the 120 day substantial use notification.

In the matter of channel slamming of PEG channels, Charter typically slams PEG channels to the mid-900's (see St. Louis page 5 above) however in Western Massachusetts, Charter slammed the PEG channels from their positions at 11, 12 and 13 to 191, 192 and 194.

As illustration, in Northbridge, Massachusetts, Charter moved the PEG channels from 11, 12, 13 to the 191, 192 and 194 without informing the PEG access operator. This was done despite the franchise agreement clearly stating that the channels would be on 11, 12 and 13. This action was a direct violation of the franchise agreement, see below.

The franchise agreement from May 2013 clearly states:

*“The Licensee shall continue to make available to the Town and/or the Access Designee three (3) full-time Downstream Channels for PEG Access purposes on channels 11, 12, and 13.”*

When the Northbridge Selectmen confronted Charter at its regular meeting, the Charter government relations person, Mr. Tom Cohan, admitted it was a mistake but Charter would not change the channels back.<sup>4</sup>

In the video, Mr. Cohan claims that the move was necessary for the digital upgrade, he also states that the lower channel positions are not important. However, Charter replaced the PEG channels with QVC, Telemundo and NFL Network, in the 11, 12 and 13 position. Two of these channels are important program offerings for Charter, if the lower channel positions were not important, why did Charter move them to the lower positions? ACT submits these positions are important channel positions and that is why Charter slammed, in direct violation of the franchise agreement, the PEG channels off these lower positions.

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<sup>4</sup> The Selectmans’ meeting is available on YouTube at

<http://www.youtube.com/watch?v=DZdhea-vigI&feature=youtu.be>

This town of 15,000 considered its options, and even while Charter is in breach of contract, the town was reluctant to enter into a legal battle with Charter, knowing the monetary resources it will take to force Charter to comply with the legal binding contract.

Charter has repeated this antagonistic toward PEG access in Worcester, Uxbridge and Douglas, Massachusetts, slamming the channels for no good reason except that they can. One would think that in face of the previous proposed acquisitions and transactions and the FCC review, Charter would have exhibited restraint. The fact that they didn't implies that even in the face of regulatory scrutiny, Charter has no regard for the public interest all the while exploiting the very public rights-of-way that make their business even possible.

These practices stand in stark contrast to what Time Warner Cable has done in the state of Missouri and in North Carolina. Once Time Warner went digital in Kansas City, Missouri they "mapped" the PEG channels to their original positions. For instance, KCCG, the Government access channel is mapped to Channel 2, while in reality it physically occupies 98.2. In Charlotte, North Carolina, the Public access channel is mapped to 21, while in reality it physically occupied 97.6. Mapping the channels provides a seamless experience for the viewer and doesn't require the PEG operators to spend significant money to "re-brand" the channel.

ACT Commenters are quite aware that in communities in North Carolina where Charter has a system, Charter has slammed PEG channels to the mid-190's while in Missouri, Charter has slammed the channels to the 900's. Our question is if Time Warner is quite capable and willing to map the channels to keep them, in the eyes of the viewer, in the position they have historically occupied, why can't Charter?

For purposed of understanding the opposing practices of Time Warner and Charter, John Rocco the Executive Director of Charlotte-Mecklenberg Public Access Corporation has provided a declaration to illustrate what ACT is asserting.<sup>5</sup>

To further illustrate Charter's lack of regard and hostility toward communities in general, we offer two examples.

After the statewide franchising law passed in Missouri, Charter went into Police and Fire Departments and municipal buildings (such as city halls and senior centers) and removed the cable drops. Charter asserted that they did not have to provide these drops any longer as a result of statewide cable franchising. This behavior was unique among the cable operators, even though Comcast, Time Warner, Bright House and many other operators, also became regulated by statewide franchises, many of which were silent on the continuance of providing drops to municipal buildings and schools (a staple in local cable franchising), we have not heard of one instance in which these other cable operators followed Charter's example and removed the cable drops.<sup>6</sup>

As recently as last year, Charter acquired a system in Missoula, Montana. There, Charter informed the municipality and the school district that they would have to rent a box for every

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<sup>5</sup> See Attachment A.

<sup>6</sup> See Attachment B, ACT Press Release.

television in the school district and the municipality. The approximate cost of the box rental was \$60,000 to \$100,000 per year.<sup>7</sup>

In contrast, when Comcast converted to all digital in Maryland, every household was offered two small DTA's for free. Missoula could easily have purchased these DTA's at a nominal cost or Charter could have followed Comcast's example and provide these converters to the school district and municipal buildings for free.

**VI. THE NEED FOR CONDITIONS UPON CHARTER COMMUNICATIONS, INC. IN  
LIGHT OF THE ENORMITY OF THESE PURCHASES AND TRANSFERS**

While the Charter transactions won't be as large as the previously proposed Comcast acquisitions and mergers, Charter will be the second largest cable operator in the nation (just behind Comcast) and its influence will have a substantial impact on consumers, PEG access television channels and municipalities. Charter may not end up qualifying as an 8,000 pound gorilla, but it certainly will be a "Giant Ogre." Charter has proven time and again, in communities across this country that they care nothing for the public interest and they will break contracts without hesitation given the chance.

We ask the Commission to impose the following conditions upon Charter Communications, Inc.

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<sup>7</sup> See Attachment C, Charter Digital TV Conversion Could Mean Higher Costs for City, Schools. Missoulain, August 27, 2014.

- Charter must be prevented from slamming PEG channels to the high digital outback and must be required to map PEG channels to their current location just as Time Warner has done.
- Charter must be prohibited from charging a municipality or school district or PEG channel operation for the transmission of the channel from the PEG center back to the Charter headend.
- Charter must be prohibited from holding channels hostage and imposing false requirements on municipalities that seek to gain channels.
- Charter must be prohibited from removing cable drops to municipal buildings that were historically provided for in franchises.
- Charter must be required to provide the municipality or school district with DTA's at no cost and refrain from requiring those entities to pay monthly rent for cable boxes to a reasonable number of outlets.

**VII. THE NEED AND RATIONALE FOR THE FCC TO CREATE AN ADMINISTRATIVE PROCESS TO ALLOW APPEAL BY A LOCAL COMMUNITY FOR A FCC OPINION ON CHARTER'S TREATMENT OF PEG AND THE LOCAL COMMUNITY**

The reason Charter Communications is allowed to behave with such reckless disregard and hostility toward PEG access television and municipalities is they have calculated that a community will not litigate their breaches of contract or violation of laws, those communities simply cannot afford to do so.

ACT Commenters recommends that the Commission set up an administrative process whereby local communities that are slated to become part of new Charter will be able to request opinions from the FCC regarding PEG practices and conditions as set forth above. The Commission currently collects approximately \$0.99 from each subscriber.<sup>8</sup> For new Charter this amounts to over \$20,000,000 annually. By having an appeal process, local communities where Charter is aggressively treating PEG unfairly would be given a public forum and FCC opinions as to Charter's actions without having to decide whether or not to enter into prohibitively expensive litigation to fight Charter in court.

We ask the Commission to impose the above conditions and to set-up the appeal process if the Commission decides to approve this merger.

Respectfully submitted,



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*PRESIDENT*

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<sup>8</sup> As of Fiscal Year 2014.

## **Attachment A**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of:

Applications of Charter Communications, Inc.,  
Time Warner Cable Inc., and  
Advanced/Newhouse Partnership for Consent to  
Transfer Control of Licenses and Authorizations

MB Docket No. 15-149

**DECLARATION OF JOHN A. ROCCO**

I, John A. Rocco, declare as follows:

1. I am the Executive Director of the Charlotte Mecklenburg Public Access Corporation (“CMPAC”) and am filing this declaration in support of American Community Televisions, *et al* comments in the above proceeding.

2. The Charlotte Mecklenburg Public Access Corporation (CMPAC), is a non-profit 501(c)(3) organization which provides facilities and training to the residents of the City of Charlotte and Mecklenburg County, who are interested in producing and cablecasting locally originated video programming. In an average year, CMPAC estimates more than 5,000 individual program episodes are aired. These programs range in scope from religious services, to public affairs programming, to arts and entertainment shows highlighting the talents of our citizens, to programming for children, youth and seniors. In addition, each year we train approximately 75 new community producers to join the thousands who have completed our training courses over the past 15 years.

3. I am submitting this declaration to express CMPAC's concern with the proposed Charter/Time Warner/Brighthouse merger. CMPAC is particularly concerned with the future of our public access channel placement after any such merger is approved.

4. Our channel, known as Access 21, has been located on Channel 21 for more than a decade. Over the past few years, Time Warner Cable has upgraded their system to an entirely digital platform. As a result, our channel has been digitized, along with the other four PEG channels in Charlotte Mecklenburg operated by the Charlotte Mecklenburg School District, the City of Charlotte, Central Piedmont Community College and the University of North Carolina at Charlotte. In each instance, Time Warner has digitally "mapped" all of these channels to their original corresponding channel numbers on the basic tier, 3, 16, 17, 21 and 22. Our fear is that Charter, given their recent past history in other communities across the country, will not do the same.

5. Over the past decade, 22 states, North Carolina among them, have taken franchising rights away from local municipalities and replaced them with a myriad of statewide franchising regimes. In most locally negotiated franchise agreements provisions are negotiated for compensation for the relocation of PEG channels. Such compensation is typically used for public information campaigns to inform the community about the channel reassignment and pay for the costs that any such relocation would cause. None of the states that have adopted statewide franchising legislation have provided for any such compensation. Moreover, we are deeply concerned, that given Charter's lack of regard for legally binding provisions in current local franchises, there would be nothing stopping them from banishing local PEG channels to the outer reaches of the digital galaxy with few, if any consequences. CMPAC is terrified that once Charter acquires Time Warner they will be unstoppable. Here, in North Carolina, the state

issued franchises are for a 60 year term as defined in the Video Services Competition Act adopted in the state of North Carolina.

6. I am aware of numerous times that cable operators have suggested that channel mapping is not an alternative available to address the needs of PEG channels to remain in historical channel positions, that has not been the case in Charlotte with Time Warner. Citizens will be harmed if providers are able to damage the effectiveness of these PEG channels by making it more difficult for the viewing public to find these channels. PEG channels need to be easily accessible to local citizens and channel mapping provides that accessibility.

7. I declare under penalty of perjury that the facts stated herein, are true and correct to the best of my knowledge and belief.

This declaration was executed on 13<sup>th</sup> day of October, 2015 in Charlotte, NC 28208.

A handwritten signature in dark ink, reading "John A. Rocco". The signature is written in a cursive, flowing style. The first name "John" is prominent, followed by "A." and "Rocco".

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John A. Rocco

## **Attachment B**

# Charter to Cut Off Service to First Responders

By AMERICAN COMMUNITY TELEVISION | AUGUST 15TH, 2011

Press Release

August 15, 2011

American Community Television (ACT) received word today that Charter Communications intends to cut off cable service to police and fire departments in small towns in Missouri, unless they now pay to receive these services.

"Cable service to municipal buildings has been provided free of charge for over thirty years as part of the franchise agreements in exchange for cable companies' use of the public rights of way," said John Rocco, President of ACT. "This move by Charter demonstrates the failure of the statewide franchising laws in Missouri and across this country."

Historically, local governments would negotiate with the cable operator for free service to municipal buildings, schools, libraries, police and fire department buildings. The service was considered part of the obligation of cable operators as they built their plant in the public rights of way. However, since Missouri adopted a statewide franchising regime, local governments have lost the power to regulate cable providers.

"At this time, when municipalities are barely making payroll, Charter has decided that it can make a profit on the backs of police and fire departments," said Rocco. "The connections are already there, the service doesn't cost Charter anything. We haven't heard of other cable companies doing this, only Charter. It's despicable."

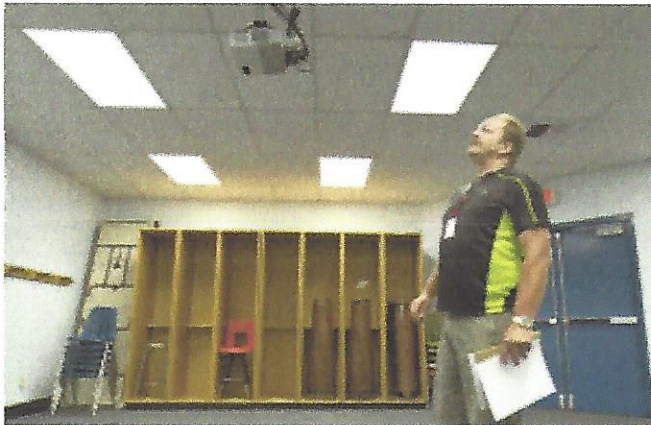
ACT intends to file comments in the upcoming Video Provider Report which will be issued by the Public Service Commission citing Charter's actions and the issue of Charter slamming the Public, Educational and Government (PEG) access channels to the 900's.

American Community Television educates and advocates on behalf of Public, Educational and Government (PEG) access television. To contact Mr. Rocco, please call 410-992-4976 or [orjohn@acommunitytv.org](mailto:orjohn@acommunitytv.org) or email Bunnie Riedel, executive director, at [riedel@acommunitytv.org](mailto:riedel@acommunitytv.org).

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## **Attachment C**

# Charter digital TV conversion could mean higher costs for city, schools



AUGUST 27, 2014 6:15 AM • BY MARTIN KIDSTON

Missoula County Public Schools could see the cost of cable television service increase when Charter Communications goes digital this week.

The cable and Internet service provider announced last month it was replacing outdated analog channels with new digital service. To receive the new service, customers must install a digital set-top box for each television that doesn't currently have one.

That could be problematic for Missoula County Public Schools, which has dozens of cable-wired televisions placed in classrooms throughout the district.

"Imagine our high schools where we have wired one central cable connection to televisions in other locations," said Hatton Littman, spokeswoman for MCPS. "It's no longer going to work, and because of the digital conversion, the cost to continue delivering cable service to each classroom the way we are now is significant."

Littman placed the cost of renting digital boxes for each cable-wired television at between \$60,000 and \$100,000 a year. She said the district isn't prepared to cover the expense.

"They (Charter) have given indication they'd provide one box per school for free," Littman said. "The problem is that you can't split that one box off into every classroom. If we could do it, they'd all have to watch the same thing."

The city's contract with Charter – found in City Ordinance 3237 – requires the provider to offer free cable to public institutions. That includes City Hall, the police and fire stations, the Missoula County Courthouse and MCPS, among others.

The question is whether MCPS counts as a single customer. The Missoula Public Library, St. Patrick Hospital, the Missoula City-County Health Department and Missoula College are also listed under the city's cable television contract.

"If you say City Hall is one customer and can have one box without paying more, it's not going to work," said Ginny Merriam. "It's very difficult, but it's still very much a discussion in progress."

The city said it's still negotiating with Charter, and Brian Anderson, director of regional communications for Charter, said the company would work as best it could to resolve the school district's dilemma.

However, he said, Charter gave the district notice of the conversion four months ago.

"If the district has gone in on its own and run additional cable lines throughout their buildings or rooms, they'd need to work with us to obtain equipment to get those boxes," Anderson said, adding that the service would still be free.

"This is not new to them," he added. "We started outreach to them four months before the cutover. It's not a surprise to anyone. They knew this was coming. We'll work with them as best we can."

Given the district's outdated wiring, Littman said, it may not be possible to rework the wiring or achieve the same programming via live-streaming over the Internet.

"Our tech infrastructure is not set up to handle that kind of live-streaming content," Littman said.